

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2189

Introduced by Assembly Member ~~Torrico~~ Ma
(Coauthor: Assembly Member Torrico)

February 18, 2010

An act to amend Section ~~311.10~~ of the Penal Code, relating to sex offenses ~~1632.5~~ of the Civil Code, relating to loan modification agreements.

LEGISLATIVE COUNSEL'S DIGEST

AB 2189, as amended, ~~Torrico Ma. Sex offenders: child pornography: distribution.~~ *Contracts: translations.*

Existing law requires, beginning on July 1, 2010, or 90 days after issuance of a form, as provided, whichever occurs later, a supervised financial organization, as defined, that negotiates specified contracts or agreements primarily in the languages of Spanish, Chinese, Tagalog, Vietnamese, or Korean in the course of entering into a contract or agreement for a loan or extension of credit secured by residential real property, to deliver, prior to the execution of the contract or agreement, and no later than 3 business days after receiving the written application, a specified form in that language summarizing the terms of the contract or agreement, as specified.

This bill would specify that these provisions apply to loan modification agreements.

~~Under existing law it is a felony to advertise for sale or distribution any obscene matter that depicts a person under 18 years of age engaging in sexual conduct.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1632.5 of the Civil Code is amended to*
2 *read:*

3 1632.5. (a) A supervised financial organization that negotiates
4 primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,
5 whether orally or in writing, in the course of entering into a contract
6 or agreement for a loan or extension of credit secured by residential
7 real property, *including a loan modification agreement*, shall
8 deliver to the other party to that contract or agreement prior to the
9 execution of the contract or agreement the form described in
10 subdivision (i) for that language.

11 (b) For purposes of this section:

12 (1) “Contract” or “agreement” shall have the same meaning as
13 defined in subdivision (g) of Section 1632.

14 (2) “Supervised financial organization” means a bank, savings
15 association, as defined in Section 5102 of the Financial Code,
16 credit union, or holding company, affiliate, or subsidiary thereof,
17 or any person subject to Division 7 (commencing with Section
18 18000), Division 9 (commencing with Section 22000), or Division
19 20 (commencing with Section 50000) of the Financial Code.

20 (c) (1) With respect to a contract or agreement for a loan or
21 extension of credit secured by residential real property as described
22 in subdivision (a), a supervised financial organization that complies
23 with this section shall be deemed in compliance with Section 1632.

24 (2) A supervised financial organization that complies with
25 Section 1632, with respect to a contract or agreement for a loan
26 or extension of credit secured by residential real property as
27 described in subdivision (a), shall be deemed in compliance with
28 this section.

29 (d) The supervised financial organization shall provide the form
30 described in subdivision (i) to the borrower no later than three
31 business days after receipt of the written application, and if any
32 of the loan terms summarized materially change after provision
33 of the translated form but prior to consummation of the loan, the

1 supervised financial organization shall provide an updated version
2 of the translated form prior to consummation of the loan.

3 (e) (1) This section does not apply to a supervised financial
4 organization that negotiates primarily in a language other than
5 English, as described by subdivision (a), if the party with whom
6 the supervised financial organization is negotiating, negotiates the
7 terms of the contract through his or her own interpreter.

8 (2) For purposes of this subdivision, “his or her own interpreter”
9 means a person, not a minor, able to speak fluently and read with
10 full understanding both the English language and one of the
11 languages specified in subdivision (a) that is the language in which
12 the contract was negotiated, who is not employed by, and whose
13 services are not made available through, the person engaged in the
14 trade or business.

15 (f) Notwithstanding subdivision (a), a translated form may retain
16 any of the following elements of the executed English language
17 contract or agreement without translation:

18 (1) Names and titles of individuals and other persons.

19 (2) Addresses, brand names, trade names, trademarks, or
20 registered service marks.

21 (3) Full or abbreviated designations of the make and model of
22 goods or services.

23 (4) Alphanumeric codes.

24 (5) Individual words or expressions having no generally accepted
25 non-English translation.

26 (g) The terms of the contract or agreement which is executed
27 in the English language shall determine the rights and obligations
28 of the parties. However, the translation of the form described in
29 subdivision (i) and required by subdivision (a) shall be admissible
30 in evidence only to show that no contract or agreement was entered
31 into because of a substantial difference in the material terms and
32 conditions of the contract or agreement and the prior translated
33 form provided to the borrower.

34 (h) (1) A licensing agency may, by order, after appropriate
35 notice and opportunity for hearing, levy administrative penalties
36 against a supervised financial organization that violates any
37 provision of this section, and the supervised financial organization
38 may be liable for administrative penalties, up to the amounts of
39 two thousand five hundred dollars (\$2,500) for the first violation,
40 five thousand dollars (\$5,000) for the second violation, and ten

1 thousand dollars (\$10,000) for each subsequent violation. Except
2 for licensing agencies exempt from the provisions of the
3 Administrative Procedure Act, any hearing shall be held in
4 accordance with the Administrative Procedure Act (Chapter 5
5 (commencing with Section 11500) of Part 1 of Division 3 of Title
6 2 of the Government Code), and the licensing agency shall have
7 all the powers granted under that act.

8 (2) A licensing agency may exercise any and all authority and
9 powers available to it under any other provisions of law to
10 administer and enforce this section, including, but not limited to,
11 investigating and examining the licensed person's books and
12 records, and charging and collecting the reasonable costs for these
13 activities. The licensing agency shall not charge a licensed person
14 twice for the same service. Any civil, criminal, and administrative
15 authority and remedies available to the licensing agency pursuant
16 to its licensing law may be sought and employed in any
17 combination deemed advisable by the licensing agency to enforce
18 the provisions of this section.

19 (3) Any supervised financial organization that violates any
20 provision of this section shall be deemed to have violated its
21 licensing law.

22 (4) Nothing in this section shall be construed to impair or impede
23 the Attorney General from bringing an action to enforce this
24 division.

25 (i) The Department of Corporations and the Department of
26 Financial Institutions shall create a form to be made available in
27 each of the languages set forth in subdivision (a) for use by a
28 supervised financial organization to summarize the terms of a
29 mortgage loan pursuant to subdivision (a). In creating the form,
30 the Department of Corporations and the Department of Financial
31 Institutions may use as guidance the United States Department of
32 Housing and Urban Development's Good Faith Estimate disclosure
33 form.

34 (j) This section shall not apply to federally chartered banks,
35 credit unions, savings banks, or thrifts.

36 (k) Except as otherwise provided in subdivision (h), this section
37 shall not be construed to create or enhance any claim, right of
38 action, or civil liability that did not previously exist under state
39 law, or limit any claim, right of action, or civil liability that
40 otherwise exists under state law.

1 (l) An action against a supervised financial organization for a
2 violation of this section may only be brought by a licensing agency
3 or by the Attorney General.

4 (m) This section shall become operative beginning on July 1,
5 2010, or 90 days following the issuance of a form by both the
6 Department of Corporations and the Department of Financial
7 Institutions pursuant to subdivision (i), whichever occurs later.

8 ~~SECTION 1. Section 311.10 of the Penal Code is amended to~~
9 ~~read:~~

10 ~~311.10. (a) Any person who advertises for sale or distribution~~
11 ~~any obscene matter knowing that it depicts a person under 18 years~~
12 ~~of age personally engaging in or personally simulating sexual~~
13 ~~conduct, as defined in Section 311.4, is guilty of a felony and is~~
14 ~~punishable by imprisonment in the state prison for two, three, or~~
15 ~~four years, or in a county jail not exceeding one year, or by a fine~~
16 ~~not exceeding fifty thousand dollars (\$50,000), or by both that fine~~
17 ~~and imprisonment.~~

18 ~~(b) Subdivision (a) shall not apply to the activities of law~~
19 ~~enforcement and prosecution agencies in the investigation and~~
20 ~~prosecution of criminal offenses.~~